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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

WALTER L. WAGNER,) Case: 2:11cv00784
)
 Plaintiff) **SUPPLEMENTAL
 SWORN AFFIDAVIT OF
 WALTER L. WAGNER IN
 SUPPORT OF ANDRUS'
 APPOINTMENT AS
 RECEIVER**
 vs.)
 PRESTON MICHIE, KENNETH)
 FRANCIK, LESLIE COBOS, MARK)
 ROBINSON, ANNETTE EMERSON)
 STEVE BRYANT, WORLD BOTANICAL)
 GARDENS, INC. (WBGI),) **Clark Waddoups, Judge**
)
 Defendants) **Paul Warner, Magistrate**
)

SUPPLEMENTAL SWORN AFFIDAVIT OF WALTER L. WAGNER
IN SUPPORT OF ANDRUS' APPOINTMENT AS RECEIVER

I, Walter L. Wagner, affirm, state and declare under penalty of perjury as follows:

I recently received a "Shareholder e-Newsletter" prepared by defendant Bryant and his associates, which is attached herewith as *Exhibit A*. In this Newsletter are numerous statements pertaining to the financial woes of WBGI, but no reference to those woes being caused by the serious wrongdoings of fraud, defamation, etc. that keeps WBGI embroiled in litigation.

In the introduction, the 'Board of Directors' advise the shareholders to visit "TripAdvisor" on the internet, and post a review of the botanical garden. I visited that site (using the provided link), and there were three comments posted by unknown persons on that site. Those comments are attached herewith as *Exhibit B* and posted below:

Comment by Adventure230:

"Total rip off! Trust me not worth it there (sic) guides suck! Talking about parties n drinking the night before! Poor management poor gardens."

Comment by sjaanf:

“Waste of time. \$13 bucks to wander around someones delapidated (sic) garden. Save your money and time. We kept looking for something pretty. Most of the plants were in bad shape looking very forgotten like Home Depots discard rack for plants. If you’re still curious, just drive in and walk around I think it’s run by teenagers and they don’t seem to care. Employee cars were parked in part of the garden. Tacky. They were friendly enough though. Just go for a walk to Akaka Falls or simply find a hiking trail and your experience will be many times better and you’ll see all the same things but they will be healthy looking and in a natural setting.”

Comment by MAUIALOHA09:

“very booring (sic). not ran (sic) very well very sloppy not much to see I would not recommend this attraction to anyone”

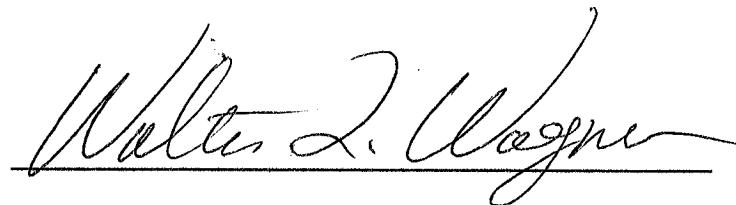
This is what the defendants have done to what had been an excellent botanical garden experience. After ten years of development, WBGI received rave comments from its visitors in 2005. Seven years later, it is now the laughingstock of visitor attractions, thanks to the ineptness of defendants. I will retrieve from my archives examples of visitor comments circa 2004, and post a second supplemental affidavit so this Court can compare to the above comments.

Relevant comments by defendant Bryant in the *Financial Update* section of the e-Newsletter are copied below:

"We remain in a difficult cash position and struggle to pay our payments on a monthly basis. Our staff continues to be limited in size and we do the most with the fewest possible people. ... Our revenues reflect a reduction since last July when new competition reduced our zip-line revenues. ... Funding is needed to move the gardens forward with present plans. If you are interested in funding future development, please email steveb@wbgi.com or markr@wbgi.com"

Perhaps what is most noteworthy is the failure to mention anything about the continuing financial cost to WBGI by the continuing frauds of the Francik group, now being maintained by others.

DATED: July 2, 2012

A handwritten signature in black ink, appearing to read "Walter L. Wagner", is written over a horizontal line.

Walter L. Wagner

EXHIBIT "A"

WBGI e-Newsletter of July 2012

Windows Live™ Hotmail (999+) Messenger (0) SkyDrive | MSN

Hotmail

New | Reply | Reply all | Forward | Delete | Junk | Sweep ▾ | Mark as ▾ | Move to ▾ | Categories ▾ |

Inbox (10656)

Folders

Junk

Drafts (132)

Sent

Deleted (54)

aclu

Kellogg Carriers (60)

KRONK (8)

LEGACY (15)

MBBG (1)

MWF (35)

NAA (14)

paypal fraud

New folder

Quick views

Messenger

Walter Wagner

To retlawdad@hotmail.com

6:06 PM

Reply ▾

FW: World Botanical Gardens Shareholder Newsletter

To see messages related to this one, group messages by conversation.

Back to messages |

NO
credit checksNO
monthly feesNO
annual fees

Get Started

serve

AdChoices ▶

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You're receiving this email because you are a shareholder of World Botanical Gardens, Inc.. This is an email Newsletter. We have chosen this method of distribution to be good stewards of the World we seek to preserve and share. Please [confirm](#) your continued interest in receiving email from us.

You may [unsubscribe](#) if you no longer wish to receive our emails.

World Botanical Gardens, Inc. Shareholder e-Newsletter

June 2012



Dear Louis F.,

Welcome to the World Botanical Gardens electronic newsletter for the shareholders.

IMPORTANT REMINDER: Be sure to update info@wblg.com on any contact information changes (i.e. email, mailing address, home phone or cell). It is the shareholder's responsibility to keep our records current with your information.

World Botanical Gardens has been moving forward with our new identity for resale purposes and joining all our attractions under one easily remembered name that continues our positive identity. Our goal is to make Botanical World Adventures the premier attraction for visitors to the Big Island. World Botanical Gardens, Inc. remains our corporate identity, but for the purpose of connecting all our adventures together we have developed the Botanical World moniker.

Be sure to join us for the Annual Shareholder Meeting on Friday, September 21st via teleconference at Noon Pacific time, 9 AM Hawaii, 3 PM Eastern. We will be sharing financial circumstances, ongoing projects and developments we have made in the gardens over the past year.

We are again accepting application to the Board of Directors. Please send your interest via email along with your resume to steveb@wblg.com. Steve will review eligible candidates and contact you for an interview.

Also, do your part and share your experience of visiting the gardens. Take a moment by clicking this link and [review World Botanical Garden on TripAdvisor](#). Your small effort will support our image to prospective customers.

Mahalo,
Your Board of Directors

Topics in this issue

[Chairman's Letter](#)

[2012 Annual Shareholder Meeting](#)

[Operations Manager's Report](#)

[Visitor Center](#)

[Segways Added to Botanical World Adventures](#)

[Financial Update](#)

Chairman's Letter

Dear Shareholders,

In January, 2012, I was elected to serve as the Board Chairman. I spent 10 days at the Garden in February to meet the staff and get a "first hand" understanding of the operation. Subsequent to my visit, I reported my findings to the Board and made recommendations to help move the business in a positive direction. Many of the recommendations require financial capital to implement; unfortunately our current situation does not allow us to proceed at this time.

We achieved our first profitable year in 2010, the first full year with our Zip Line adventure. The first part of 2011 appeared it would be another good year until mid summer when gate receipts dropped by as much as 55% by year end. We believe this is primarily due to competition from several other Zip Line attractions that have opened on the Big Island. In September, 2011, we began conducting tours using Segway personal transporters. The implementation of this business was more complicated than expected which prevented any positive financial contribution for last year. Consequently, 2011 resulted in a financial loss that we have not yet recovered from.

Consequently, 2011 has been a financial loss that we have not yet recovered from.

The Zip Line business continues to be profitable but not to the extent it was prior to the added competition. The Segway business is gradually increasing and expected to be profitable for the year. The Garden itself does not generate enough revenue to cover the expense of keeping it maintained at the level guests expect it to be. It's apparent that without a legitimate Visitor Center and modern facilities, we aren't able to attract or accommodate large tour groups that could generate the revenue we need to operate at a profit.

Although the financial situation is disappointing, the attitude and effort of our staff is very positive. We have been forced to reduce our expenses, directly affecting the compensation of these hard working and dedicated people. We have seen a modest increase in May gate receipts and are optimistic that the summer months will put us in a positive financial situation. Essentially, we need additional capital to sustain the business long term. Our efforts to arrange financing from local banks has not yet been successful. With current economic conditions, that's not likely to change.

The Board will continue to search for opportunities to help return the business to profitability. We have considered converting the Garden itself to a nonprofit entity and retain the profitable segments of the business for the corporate enterprise. This process would not be overly complicated but unless we identify an adequate source of financial support, our current financial situation could not sustain the nonprofit operation. The Board and I welcome any ideas that our Shareholders may have to help bring the business to financial stability.

We are planning the Annual Shareholders Meeting for September and I hope many of you will be able to participate.

Kind Regards,

Steve Bryant, Chairman
steveb@wbgi.com

2012 Annual Meeting

Consolidating Our Base and Developing Our Future

The 2012 Annual Shareholder's Meeting will be held on Friday, September 21, 2012 at noon (12:00 PM) Pacific, 3 PM Eastern, 9 AM Hawaii.

The agenda will be posted on the website prior to the meeting date. Complete details of the meeting will be available prior to the meeting in the Shareholders Section of the website, so please check for future details. The minutes for past annual meetings can also be found at www.wbgi.com in the Shareholders section.

You can enter the Shareholders section by entering your individual login information or by using the username: shareholder and the password: 4information. The shareholder username and password will function for now, but will be inactivated at a future date.

WBGI Operations Manager's Report

New identity and attractions in the gardens.

As we look ahead we are enthused about what the future holds for World Botanical Gardens. Thanks to your support and in spite of the economy we continue to accomplish great things at our garden site in Hawaii and make considerable strides in showcasing our unique location.

The entire lower 26 acres owned by WBGI is now entirely cleared. This accomplishment opens space to the planned theme ethnic garden areas in our future. The River Walk trail we installed about a year ago is a huge success! This new area really opens up our "Botanical Adventures" to another level.

Our newest attraction is Segway Personal Transporters, the only adventure of this type on the island of Hawaii. We are just starting our ninth month of operation giving guided tours and it just gets better every day. Our staff did a great job of adjusting to a new job skill and strive to make each customer have a memorable experience.



Our Zip Line Adventure has seen many changes in the last year due to much more competition compared to when we first opened. Our focus now is to make ourselves different from other competition by concentrating on marketing ourselves as a "family fun adventure". We can boast this claim due to the construction style of our zip course as well as other activities in the same location for people of all ages. Not to be forgotten and probably most important of all is the true Hawaiian experience each guest experiences by visiting WBGI.

A hui hou and malama pono,

Phyllis Segawa - Operations Manager

Visitor Center

Progress report

The Building Committee under the direction of Steve Bryant has moved forward with a well on the Gardens property. A reliable water source is one element that will be required for lavatories as we develop our visitor center.

Irrigation water has also been needed since the Gardens began taking shape. We have sorely needed a reliable water source for irrigation, but could hardly prioritize this above other required items. Now as the visitor center plans draw near and we can be more certain as to where a water source is best placed, we can take this step to reduce the future cost and provide relief from drought, should one occur. Furthermore, all the flowers and plants stay healthier when they can be supplemented with water as needed.

With these thoughts in mind, we have received bids and selected a contractor to drill a well on the upper edge of the property we own. We have applied for the permit and hope to be drilling in September. We should be able to continue the project once the well is completed by adding a tank. This will improve volume and provide smooth pump operation.

With this complete, we can supply all of the current and future Gardens water needs, including the new visitor center.

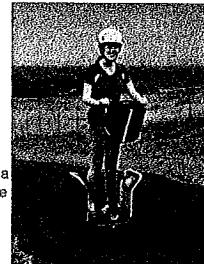
By taking these steps, we hope to be able to expedite the permitting process for the visitors center. Having as much infrastructure in place prior to the building project itself will keep the permitting process as straightforward as possible. Furthermore, we are continuing to build the visitor center in smaller bites rather than taking on the entire cost all at once.

Segways at Botanical World Adventures

New adventure arrives along with a unifying identity

In September 2011, a new adventure opened in the gardens. Segway Personal Transporters (PT) now carry guests to see areas of the gardens they may have never visited without this tour.

Guests to our tours have made wonderful comments on TripAdvisor.com and we have a 5 star rating for the tours. All guests are trained by our guides, before embarking on one of four different tours, accompanied by the guides. Combination tours with the Zip Line and Segway are also available.



Guests for the Segway must weigh between 70 and 270 lbs (same as the zip line) and must be over 14 years old. Our tours include the gardens, waterfalls, rain forest and other areas local to the gardens.

Since this adventure was added to the gardens our original identity did not adequately reflect the variety of activities we feature. The name World Botanical Gardens, Waterfalls, Zip Lines, Segways... well, you can see the dilemma.

We determined a DBA (doing business as) was needed to unify our offerings so we could effectively market to the public. By chance the name Botanical World was offered as a web URL at about the same time. The name offered several advantages. First, it moved our web site presence up in searches. Second, it contained two of the words in our corporate name. Third and possibly most importantly, it revealed the core identity of the gardens in a fun and adventuresome way. Discussions were held and the name was finalized as Botanical World Adventures last fall. An ad campaign was devised and implemented and the transition is now nearly complete.

We continue to look for unique ways to show garden guests through the wonderful areas we are blessed to be caretakers of. Watch the gardens continue to improve and for other tours that we add to enhance the visitor experience to the Big Island of Hawaii.

Financial Update

Difficult times for Garden Finances

We remain in a difficult cash position and struggle to pay our payments on a monthly basis. Our staff continues to be limited in size and we do the most with the fewest people possible. All staff are doing more with less. Fortunately, last year we purchased a tractor that allows the limited gardening staff the ability to continue to maintain the many acres we have. We have also focused over the past few years to obtain other equipment to assist in making it possible to service our needs with efficient staffing.

Our revenues reflect a reduction since last July when new competition reduced our zip line revenues. We remain at well over double the sales we had prior to the addition of the zip line adventure to our venue. Segway sales are also on a growing rate. Although slow to come up due to complexity in the adventure, we are now seeing a positive return to the bottom line. We will continue to look for ways to diversify our revenue as we also look for ways to show the gardens more efficiently.

Payroll, License Fees and Marketing remain our top expenses and we continue to look for the best use of each dollar spent. Our staff remains efficient, we have been given reductions and concessions from our partners and our marketing team continues to produce beyond their cost. We appreciate all these stakeholders for their individual sacrifices, along with that of our board and officers.

We encourage you to keep current with our quarterly financial reports that we work to place on the shareholder section of our web site 45 days from the quarter ending date.

Funding is needed to move the gardens forward with present plans. If you are interested in funding future development, please email steve@wbgi.com or mark@wbgi.com.



Mahalo and Thank You for your continued support. We look forward to updating you on the progress at the Gardens at the upcoming 2012 Shareholder Meeting!

World Botanical Gardens, Inc. - Botanical World Adventures



**Save
\$244**

If you are a shareholder, are going to the gardens and want to ride the Zip Isle Zip Line Adventure and/or Segways, make sure you mention you are a shareholder when making your reservation. After making reservations our customer service will verify your status and your fee will be \$25 or \$50 for both adventures which is a savings of \$244 off the Rider price of \$147 for each. Kama'aina shareholders will save the difference from the usual \$117.60, still saving \$92.60. ID will be required upon check-in. For shareholders of record on date of tour only.

??Offer Good as long as you are a shareholder!

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World Botanical Gardens, Inc. | 31-240 Old Mamalahoa Highway | PO Box 174 | Hakalau | HI | 96710

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EXHIBIT "B"

WBGI TripAdvisor Anonymous Comments



World Botanical Gardens

Highway 19 & Leopolino Road & Old Mamalohoa Highway, Hwy 19 at mile marker 16 - 15 Miles north of Hilo, Hakalau, Island of Hawaii, HI 96728

Your first-hand experiences really help other travelers. Thanks!

Your overall rating of this attraction

Click to rate

Title of your review

Your review

(50 character minimum)

By sharing your experiences you're helping travelers make better choices and plan their dream trips. Thank you!

What sort of visit was this?

Couples

Family (young children)

Family (teens)

Friends

Business

Solo

When did you visit?

Select one 

Could you say a little more about it? (optional)

Is there a fee for this attraction?

No Yes

Recommended length of visit

<1 hour 1-2 hours 2-3 hours More than 3 hours

Does this attraction have the following?

Food available for purchase

Bathroom facilities

Stairs / elevator

Wheelchair access

Lockers / storage

Stroller parking

Do you have photos to share? (optional)

Recent reviews of this attraction

 Adventure230

"Total rip off"

Total rip off! Trust me not worth it there guides suck! Talking about parties n drinking the night before! Poor management poor gardens

 sjaaanf

"Waste of time."

\$13 bucks to wander around someones delapidated garden. Save your money and time. We kept looking for something pretty. Most of the plants were in bad shape looking very forgotten like Home Depots discard rack for plants. If you're still curious, just drive in and walk around I think it's run by teenagers and they don't seem to care. Employee cars were parked in part of the garden. Tacky. They were friendly enough though. Just go for a walk to Akaka Falls or simply find a hiking trail and your experience will be many times better and you'll see all the same things but they will be healthy looking and in a natural setting.

less

 MAUIALOHA09

"very booring"

not ran very well very sloppy not much to see i would not recommend this attraction to anyone

Tips for writing a great review

Sharing with friends

Show your real name and photo to Facebook friends who view your reviews on TripAdvisor.

Submit your review

I certify that this review is based on my own experience and is my genuine opinion of this establishment and that I have no personal or business relationship with this establishment, and have not been offered any incentive or payment originating from the establishment to write this review. I understand that TripAdvisor has a zero-tolerance policy on fake reviews. [Learn more](#)

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